FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

C. A. No. 40 OF 2006 in LPA St. 4097 of 2006

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar' ɷrders. Court' ɷr Judge' ɷrders

Mr. A. N. Maniar for applicants
Mr. S. A. Ghaisas, for respondents.

CORAM: **R.M.S. KHANDEPARKAR**
&
MRS. ROSHAN DALVI, JJ.
DATE:27/03/2006

P.C.:

This is an application for condonation of delay of 41 days in filing the LPA against the order passed by the learned Single Judge in writ petition no. 8269 of 2004. The ground for delay which has been disclosed is that the appellant was disheartened after the impugned order was passed by the learned Single Judge and on account of support given by his relatives he has now decided to file the appeal. The cause disclosed for delay is not at all satisfactory. That apart there is no substance in the appeal itself.

The appellant seeks to challenge the order

passed by the learned Single Judge wherein it has been clearly observed that the Divisional Registrar in its order has given a clear finding that the applicant had refused to accept the service of notice relating to the proceedings for issuance of recovery certificate in terms of section 101 of the Maharashtra Cooperative Societies Act 1960. To a specific query from the court whether the said finding of the Registrar was challenged in the writ petition, the learned advocate after taking us through the copy of the writ petition squarely conceded that there was no specific challenge to the said notice, though it was contended that the same has to be ascertained from the facts relating to attempt to serve the notice. Undisputedly there is a clear finding that the applicant had refused to accept the service. Once the authorities come to the said finding unless the applicant disputes the fact about refusal to accept the notice, the mere contention that the applicant has not refused to accept the notice is of no consequence. Being so, the contention that there was no proper service of the notice is totally devoid of any substance.

Another ground on which interference of the order of the Registrar was sought for was that the shop was sold without holding any public auction. The applicant however, is unable to point out as to what

prejudice was caused to the applicant on account of the sale of the shop without adopting proceedings by way of public auction. The applicant has not been able to disclose that on account of private sale of the shop the property in question did not fetch the market value thereof. Considering all factors, these the learned Single Judge has refused to accept the contentions of the applicant and dismissed the petition. Absolutely there is no merit in the appeal. For the reasons stated above the application for condonation of delay is rejected. Consequently the appeal also stands dismissed.

(MRS. ROSHAN DALVI J.) **(R.M.S.KHANDEPARKAR J)**